IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4218 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAJID @ SAJU GULAM MOHD. KOTHARI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 4218 of 2001

MR NM KAPADIA for Petitioner No. 1

MR SS PATEL AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 06/11/2001

ORAL JUDGEMENT

1. In exercise of powers under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Surat City, Surat, vide order dated April 25, 2001, Annexure A

to the petition, detained the petitioner detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a dangerous person within the meaning of section 2 (c) of the Act as two cases under the IPC have been registered against him which are pending trial/investigation stage and statements of two anonymous witnesses are recorded in unregistered cases and, therefore, according to the detaining authority the activities of the petitioner are prejudicial to the maintenance of public order and hence powers under Section 9 (2) of the Act are exercised by the detaining authority by not disclosing the identity of those witnesses and detained the petitioner - detenu.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Mr. Kapadia, learned advocate for the petitioner has restricted his arguments to the effect that so far as the two cases registered against the petitioner are concerned, they do not reflect the disturbance of the public order; they only reflect the disturbance of law and order situation. In support of her aforesaid submission, he drew the attention of this Court to the contents of the FIRs lodged against the petitioner. On having perusal of the FIRs, according to him, it can be said that offences registered against the petitioner are only related to the breach of the law and order situation. Therefore, according to him, the order recorded by the detaining authority suffers from vices of non-application of mind and hence is liable to be quashed and set aside by allowing the petition and setting the petitioner at liberty. Besides this, the privilege claimed by the detaining authority under section 9 (2) of the Act cannot be called genuine in the absence of affidavit in reply filed on behalf of the detaining authority and, therefore, order of detention stands vitiated.

5. Mr. S.S. Patel, learned AGP has appeared on behalf of the respondents and opposed the petition by making oral submissions. He, however, does not dispute the factual aspect with regard to the fact that the offences registered against the petitioner reflect the

disturbance of the law and order only and not the disturbance of public order. He, therefore, urged to pass appropriate order in light of the settled principles enunciated by the Supreme Court as well as this Court in this regard.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. "Public Order" is an expression of wide connotation and signifies that state of tranquility prevailing among the members of a political society as a result of the internal regulations enforced by the Government which they have instituted. "Public Order" is synonymous with public safety and tranquility. It is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war affecting the security of the State. The overlap of public order and public tranquility is only partial. The terms are not always synonymous. The latter is a much wider expression and takes in many things which cannot be described as public disorder. The words 'public order' and 'public tranquility' overlap to a certain extent but there are matters which disturb public tranquility without being a disturbance of public order. In short, it is not the same as maintenance of law and order. Maintenance of law and order means the prevention of disorders of comparatively lesser gravity and of local significance. Individual actions which do not disturb the even tempo of life in the society and community or do not cause apprehension in the minds of the residents of the locality in regard to maintenance of public order.

8. Keeping in view the aforesaid aspect of distinction between the breach of the public order and breach of law and order situation, if we examine the FIRs lodged against the present petitioner, it cannot be said that the allegations made against the petitioner would amount to breach of public order but it only reflects breach of the law and order situation. The detaining authority has considered the contents of the said FIRs as the breach of the public order which is erroneous and, hence, order of detention passed by the detaining authority cannot be called genuine and therefore the order of detention stands vitiated and the petition deserves to be allowed by quashing and setting the impugned order of detention and setting the petitioner at liberty forthwith.

9. So far as the privilege claimed under Section 9 (2) of the Act is concerned, the same cannot be considered as genuine in absence of affidavit in reply filed by the detaining authority. On this ground also the impugned order of detention deserves to be quashed and set aside.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

(karan)